HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1738 of 2006

Petitioner:		Kursoram Patel, S/o Late Shri Balak Ram Patel, Aged about 65 years, R/o Village Thakurpali, Post – Tarapur, Tehsil & Dist : Raigarh-(C.G.)
	Versus	
Respondents:	1.	State of Chhattisgarh, Through – The Secretary, Tribal Welfare Department, D.K.S. Bhawan, Dist: Raipur- (C.G.)
	2.	The Dy. Commissioner, Tribal Welfare Department, Bilaspur, Dist: Bilaspur-(C.G.)
	3.	The Joint Director, Treasuries Accounts and Pension, Bilaspur-(C.G.)
	4.	The Collector, Raigarh, Dist : Raigarh –(C.G.).
	5.	The Dist : Education Officer, Raigarh- (C.G.).
	6.	The Dist : Treasuries Officer, Raigarh-(C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Shri Sanjay Patel, Advocate for the petitioner.

Shri Sushil Dubey, Govt. Advocate for the respondents.

ORDER

(Passed on this 30th day of April, 2007)

1. The petitioner is aggrieved by the action of the respondents whereby the respondents have decided to recover a sum of Rs. 23,935/-, as per the order dated 30.8.2003, on the basis of the Chart (Annexure P/3), as excess payment made to the petitioner.

2. The brief facts, in nutshell, are that the petitioner was appointed on the post of Assistant Master vide order dated 21.11.1963

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(Annexure P/1). On 6.9.1989 the petitioner was promoted on the post of Upper Division Teacher and thereafter on the post of Head Master on 6.9.1989 (Annexure P/2) in the pay scale of Rs. 1540-2760. The petitioner retired from the service on attaining the age of superannuation w.e.f. 31.12.2002. The petitioner received the order dated 30.8.2003 (Annexure P/3) whereby it is directed that a sum of Rs. 23,935/- is to be recovered from the pensionary benefits of the petitioner towards recovery of excess payment for the period 7.10.1989 to March, 1997.

3. Learned counsel appearing for the petitioner submits that there is no fault on the part of the petitioner and the amount is paid to him in accordance with the pay scales, revised by the respondents from time to time. The respondents cannot recover the amount, already paid to the petitioner, after such a long period, after his retirement, that too without following the principles of natural justice.

4. Learned counsel appearing for the respondents submits that since the pay of the petitioner was fixed contrary to the provisions of Fundamental Rule 22-D (1), the excess amount can be recovered from the pensionary benefits of the petitioner, even after his retirement.

5. The Supreme Court in the case of **Sahib Ram Vs. State of Haryana and others**[1] in para 5 has held as under:-

> *"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any*

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misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant……."

6. This Court in the case of **Vidyadhar Tiwari Vs. State of Chhattisgarh & others**[2] has held that for the excess payment, if any, made to the petitioner, he was not at fault and the amount received by him might have been used by adjusting himself accordingly treating the same as his salary. At this stage, directing recovery of the alleged excess amount from the pensionary benefits of the petitioner will not be just and proper.

7. In view of the foregoing, this petition stands disposed of in terms of the order passed in the case of **Vidyadhar Tiwari** (Supra). No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

{ 1995 Supp (1) S.C.C. 20[1],
{ 2006 (1) M.P.H.T. 105 (C.G.)[2] }

Thakur